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AUG 4 2000

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NOTICE OF EX PARTE PRESENTATION

Magalie Roman Salas

Secretary

Federal Communications Commission

445 Twelfth Street, S.W.

Washington, D.C. 20554

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Re: In the Matter of Promotion of Competitive Networks in Local
Telecommunications Markets, WT Docket No. 99-217 /

Dear Ms. Salas:

Please be advised that the attached letter was sent today to Mr. Jeffrey Steinberg,
Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau,
regarding the matter referenced above.

In accordance with the Commission's rules, the original and a copy of this *ex parte* letter are being filed in the Office of the Secretary. Please include a copy of the attached letter in the public record of this docket.

Sincerely,

Lawrence R. Freedman

Lawrence R. Freedman

Counsel for MultiTechnology Services, L.P. d/b/a

CoServ Broadband Services

Attachment

cc: Mr. Jeffrey S. Steinberg
Mr. Jim Schlichting
Mr. Joel Taubenblatt

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August 4, 2000

VIA HAND DELIVERY

Mr. Jeffrey S. Steinberg
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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Re: In the Matter of Promotion of Competitive Networks in Local
Telecommunications Markets, WT Docket No. 99-217

Dear Mr. Steinberg:

MultiTechnology Services, L.P. d/b/a CoServ Broadband Services ("MTS") is a competitive local exchange carrier ("CLEC") that has made substantial investments to install its own telecommunications equipment into various MDUs in Texas pursuant to agreements with private property owners. Because of the potential impact of this proceeding on these investments, MTS submits these comments for the Commission's consideration.

With regard to a number of properties in Texas, MTS (or its affiliates) entered into agreements with property owners to build telecommunications facilities to serve customers at those properties. Just as incumbent LECs like SWBT impose charges for the use of their facilities, MTS filed tariffs identifying the reasonable charges and terms and conditions that apply when other telecommunications providers seek to gain access to MTS's facilities. Southwestern Bell Telephone ("SWBT") gained access to some of MTS's facilities, yet refused to pay MTS's tariffed rates. SWBT has utilized facilities paid for and installed by MTS (or its affiliates) to serve telephone customers. SWBT has undoubtedly derived substantial revenues from these customers. MTS has established (and tariffed) a non-discriminatory schedule of rates, terms and conditions for the use of its facilities, based in part on its costs to install and maintain the facilities. However, SWBT has refused to pay these charges, substituting instead its own judgment as to what is appropriate compensation. As a result, MTS has been deprived of in excess of \$3 million in revenues, and has had to file a complaint with the Public Utility Commission

of Texas to compel SWBT to pay the reasonable charges it owes to MTS for use of its facilities.

MTS urges this Commission to adopt a policy designed to prevent such situations from recurring. MTS does not take the position here that the Commission is precluded from regulating a telecommunications provider's access to private property; nor does it advocate here that the Commission should give all telecommunications providers unfettered access to private property and to other LECs' equipment at no cost. Instead, MTS urges the Commission to adopt a "middle ground" position, requiring property owners to provide non-discriminatory access to inside wire and facilities *provided that* the owner of the equipment is compensated on just and reasonable terms. Moreover, if the owner of the equipment is an incumbent LEC ("ILEC"), the amount charged to access the equipment should be calculated pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (hereinafter, the "Act"). The justification for this distinction in compensation is discussed in greater detail below.

Two key points support MTS's proposed "middle ground" position. First, under Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435 (1982), the United States Supreme Court reiterated a longstanding constitutional principle under the Fifth Amendment requiring just compensation for the forced occupation or use of property. Specifically, the Supreme Court in Loretto held that requiring the installation or use of wires constitutes a taking of private property and the owner is entitled to just compensation for that taking.

Second, under the Act, CLECs must pay for access to and use of an ILEC's equipment. *See* 47 U.S.C. § 251. Thus, it is consistent with the purpose of the Act to similarly and reciprocally require compensation from other providers for access to and use of a CLEC's equipment.

Through the telecommunications provider's contract with the property owner to install facilities in the property, that provider steps into the shoes of the property owner for purposes of receiving just compensation for access to such private property. Therefore, once it has been determined that the owner of the equipment should be compensated, the only remaining issue is how much compensation is required. Under Sections 251 and 252 of the Act, ILECs are required to price their facilities and equipment on rates, terms and conditions that are just, reasonable and nondiscriminatory. MTS, as a CLEC, is not governed by those cost provisions. MTS is bound by the broader requirements in Sections 201 and 202 of the Act to charge "just and reasonable" rates with reasonable terms and conditions.

In Texas, MTS has filed a tariff permitting access to its equipment with reasonable terms and conditions. For the reasons stated above, if the Commission chooses to require non-discriminatory access to CLEC equipment, MTS is entitled to just and reasonable compensation on reasonable terms and conditions.

Mr. Steinberg
August 4, 2000
Page 3

Sincerely,

Lawrence R. Freedman /jbr

Lawrence R. Freedman
Counsel for MultiTechnology Services, L.P.
d/b/a CoServ Broadband Services

cc: Mr. Jim Schlichting
Mr. Joel Taubenblatt